

APPEAL NO. 031075
FILED JUNE 9, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 26, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant has not had disability; that the respondent (carrier) is relieved of liability under Section 409.002 because the claimant failed to timely notify her employer of her injury pursuant to Section 409.001; and that the carrier did not waive its right to contest compensability of the claimed injury because it did timely contest the injury in accordance with Sections 409.021 and 409.022. The claimant appealed the hearing officer's determinations on all of the disputed issues. The carrier responded, requesting affirmance.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10); that she had disability as defined by Section 401.011(16); and that she timely notified her employer of her claimed injury within 30 days of the date of the claimed injury as required by Section 409.001(a), or had good cause for failing to timely notify the employer of the claimed injury. Conflicting evidence was presented on the disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer's determinations on the disputed issues of compensable injury, disability, and notice of injury are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16).

With regard to the waiver issue, the hearing officer found that the carrier first received written notice of the claimed injury on March 7, 2002, and that it filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) with the Texas Workers' Compensation Commission (Commission) on March 11, 2002, disputing compensability of the alleged injury. Since the dispute was filed with the Commission within seven days of the receipt of written notice, the hearing officer concluded that the carrier did not waive its right to dispute compensability because it had timely contested the injury in accordance with Section 409.021. We conclude that the hearing officer's determination on the waiver issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*. We do not find merit in the claimant's

assertion that oral notice of an injury to a carrier suffices to start the time period for the carrier to dispute compensability because Section 409.021(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §124.3(a) (Rule 124.3(a)) require written notice of injury to the carrier to start the seven-day time period to pay or dispute. See also Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), in which the court concluded that under Sections 409.021 and 409.022, a carrier that fails to begin benefit payments as required by the 1989 Act or send a notice of refusal to pay within seven days after it receives "written notice of injury" has not met the statutory requisite to later contest compensability.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **EAGLE PACIFIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge